

APPEAL NO. 010516

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 15, 2001. The hearing officer resolved the disputed issues by concluding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the sixth and seventh quarters. The appellant (carrier) appeals and argues that during the qualifying periods for the sixth and seventh quarters, the claimant's unemployment was not a direct result of his compensable injury and that he did not make a good faith effort to search for employment commensurate with his ability to work. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in concluding that the claimant is entitled to SIBs for the sixth and seventh quarters, stipulated as July 28, 2000, through October 26, 2000, and October 27, 2000, through January 25, 2001. The claimant testified that during the qualifying periods for these SIBs quarters, he did not work in any capacity but did look for employment commensurate with his ability to work. His testimony is borne out in his Application for Supplemental Income Benefits (TWCC-52) forms. The claimant's evidence from a rehabilitation service also chronicle his job search for several positions. Conversely, in support of its contentions, the carrier points to the testimony of the claimant that he "wouldn't be able to say" what types of physical activity he could perform. The carrier also argues that there is "no medical explanation" regarding whether the claimant fully recovered from his compensable injury; that he did not make a good faith effort to look for work commensurate with his ability because he did not take English classes and because he limited his job search to positions paying \$7.00 or more per hour; and that he made no showing of "following up with contacts" with respect to job applications.

The parties introduced conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disrupt the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge